Specific Performance of Contract to Convey Land
Partial Performance and Statute of Frauds.

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA
Waycross Division

In the matter of: HAROLD T. CARDWELL ROBERTA ANN D. CARDWELL (Chapter 13 Case 89-50274) Debtors ROBERT T. CROWELL Plaintiff v. HAROLD T. CARDWELL ROBERTA ANN D. CARDWELL Defendants	Adversary Proceeding Number 90-5007

FILED
at 4 O'clock & 31 min. PM
Date 10/2/90
MARY C. BECTON, CLERK
United States Bankruptcy Court
Savannah, Georgia PCB

MEMORANDUM AND ORDER

On July 17, 1990, a trial was held upon a Complaint to Determine the Validity, Priority or Extent of a Lien or Other Interest in Property and for Specific Performance of Contract to Convey Land. Upon consideration of the evidence adduced at trial,

the briefs and other documentation submitted by the parties and applicable authorities, I make the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

This proceeding concerns a dispute over the ownership right to a certain tract of property consisting of 5 acres located in Brantley County, Georgia. The Defendants are Chapter 13 Debtors with a case pending before this Court, having filed their Chapter 13 petition on October 12, 1989, as amended March 15, 1990. The Plaintiff moves for specific performance of a lease/purchase agreement entered into between himself and the Debtors on or about April 4, 1989, for the purchase of the Brantley County property. The Debtors assert that no such lease/purchase agreement existed and that the arrangement with the Movant was that of landlord/tenant in a standard rental transaction.

The property at issue was encumbered by a Deed to Secure Debt with First Railroad Credit Union ("First Railroad") in the amount of $30,900.00 executed March 28, 1988. Said Deed provided for monthly payments of principal and interest in the amount of

$333.56, with the balance of the indebtedness due and payable by April 1, 2000. At the time of the lease/purchase agreement with the Movant, the Debtors were in arrears $2,276.36 in their obligation to First Railroad Credit Union and faced imminent foreclosure and sale. The Movant, formerly a close friend of the Debtors, was aware of the situation and approached the Debtors concerning possible purchase of the property. A Lease Purchase Agreement ("Agreement") was reached whereby the Movant paid the existing $2,276.36 arrearage to First Railroad as consideration for an exclusive option to purchase the Brantley County property, said option to remain open for a period of twelve months. The Agreement further provided that the purchase price was to be equal to the principal indebtedness and accumulated interest owed First Railroad as of the date of closing. In addition, the Agreement provided that, in the event the Debtors were unwilling or unable to complete the sale, the Movant would be entitled to a full refund of the $2,276.36 consideration paid. Finally, the Agreement provided that the Movant would provide liability insurance on the property and pay all real estate taxes on the property as well.

It was established at trial that the Movant paid the $2,276.36 arrearage over to First Railroad, moved onto the property and paid the monthly payments of $333.56 directly to First Railroad.

It was further established that the Movant made several improvements to the property while to lived there. The Movant made some attempt to insure the property but was unable to establish an insurable interest because the lease/purchase agreement was never fully executed. It had been signed by the Movant and Mrs. Cardwell. However, Mr. Cardwell did not to sign the document despite repeated requests from the Movant. The Movant did not pay property taxes on the realty in 1989 or 1990.

There is no evidence that the Debtors ever tendered the return of Movant's consideration of $2,276.36 nor that the Movant was listed as a creditor on the Debtors' schedules. The Debtors' Chapter 13 Plan, duly executed by both Debtors and prepared by competent counsel, provided " . . . and First Railroad Credit Union who have liens on property of the debtor [which] is being purchase by other individuals shall be paid 100% outside the plan directly by the individuals purchasing the debtors' property to these creditors." (Emphasis provided). Item 14(a) of the Debtors' schedules listing real property owned by the Debtors states: "Both of these tracts are being purchased with purchaser's [sic] making direct payments to Lien Holders - First Railroad Community Federal Credit Union and Bank South." That statement is followed by an attachment including a legal description of the Brantley County

property at issue. Moreover, the Trustee's notes from the Debtors' Section 341 Creditors' Meeting reflect the Debtors' sworn testimony regarding the sale of the contested property to the Movant. In addition, a tape of the Section 341 Meeting was played at the hearing on this Motion in which the Debtor Mrs. Cardwell clearly stated that this property had been sold to the Movant.

In December, 1989, the home on the Brantley County property was totally destroyed by fire. Although neither Debtors nor the Movant carried insurance on the property, it was nonetheless insured by First Railroad through "forced place insurance" in the amount of $25,000.00. Therein lies the heart of the present dispute. Upon payment of the insurance claim, the outstanding balance owed on the 5 acres of realty was reduced to approximately $4,651.51.

On March 13, 1990, Debtors amended Item 14(a) of their Chapter 13 statement to reflect ownership of the 5 acres of Brantley County realty. In addition, Schedule B-4 was amended to claim an exemption of the aforementioned property pursuant to O.C.G.A. Section 14-13-100(a)(6). Said amendment described the property as "property located in Brantley County, Georgia, formerly rented by Mr. Crowell." Finally, on that same date, Debtors amended their

Chapter 13 plan proposing to pay the indebtedness owed to First Railroad in the amount of $4,651.51 through their Chapter 13 plan.

CONCLUSIONS OF LAW

Movant asserts that the Agreement between these parties is enforceable notwithstanding the absence of Mr. Cardwell's signature as Movant's partial performance of the contract constitutes an exception to the Statute of Frauds and authorizes specific performance of the lease/purchase contract. Movant also prays for damages in the amount of $5,000.00 for alleged bad faith on behalf of the Debtors. Debtors assert that the evidence does not establish a meeting of the minds sufficient to establish a contract for the sale of realty, that the Agreement was irrelevant as it was not signed by all parties with an ownership interest in the property, and therefore the arrangement between the parties was that of landlord and tenant in a tenancy at will.

Upon hearing the evidence adduced at trial, I find as a factual matter that the parties did have the requisite meeting of the minds sufficient to establish a contract for the sale of this realty. The Movant paid the outstanding arrearage on the mortgage,

serviced the debt, moved onto the property and made several improvements, all with the consent of both Debtors who indirectly enjoyed the benefits of the arrangement in that property held in their name was not publicly foreclosed upon. In addition, the Agreement was memorialized in writing and signed by one Co-Debtor. At no point prior to March, 1990, did the Debtors make any attempt to rescind the oral agreement or to refund the Movant's purchase price. In fact, it was only after the discovery that nearly 84% of the outstanding debt on the property had been paid by the forced place insurance that the Debtors asserted any ownership interest in the property at all in connection with this bankruptcy case. Moreover, the Debtors acknowledged the sale of the property under oath in their bankruptcy petitions and in sworn testimony at their Section 341 meeting of creditors. In light of these facts, I find that there is sufficient circumstantial evidence to establish the requisite meeting of minds for the sale of this property.

It is well established in Georgia that partial payment of the purchase price for real property coupled with possession of the property will remove the land sale from the statute of frauds. See Wimberly v. Bryan, 55 Ga. 198 (1875) (Where defendant paid $1,000.00 towards the purchase price for land signed a note for $3,000.00 more, and took possession thereof, such acts constituted

partial performance of the oral contract of sale so as to remove it from the statute of frauds and the defense that the contract was not reduced to writing was unavailable); Corbin v. Durdin, 126 Ga. 429 (1906) (When partial payment of purchase price for land is accompanied by possession thereof, it will amount to partial performance sufficient to remove the oral contract from the statute of frauds); cf. Steininger v. Williams, 63 Ga. 475 (1879) (Partial performance of oral contract to rent land for a period exceeding one year, including payment of money and possession of the property, removed the contract from the statute of frauds).

In accordance with the foregoing factual and legal conclusions, I deem an award of specific performance to be a proper equitable remedy in this case. Because it is possible that the Debtors held a good faith belief that they were not bound by the unsigned Agreement, I will not award monetary damages.

O R D E R

Pursuant to the foregoing Findings of Fact and Conclusions of Law, IT IS THE ORDER OF THIS COURT that the Debtors Harold T. Cardwell and Roberta Ann D. Cardwell, shall convey their

interest in the approximate 15 acres of Brantley County property, legally described as:

> All that tract of land containing 5.00 acres, more or less, lying in original Land Lot No. 176 in the 9th Land District of Brantley County, Georgia, described as follows: To locate the place or point of beginning start at a concrete monument marking the northeast corner of said Land Lot No. 176 (said point being the common corner of Land Lots Nos. 176, 177, and 192 and 193 of the said 9th Land District of said county, as shown on that certain plat dated March 30, 1977, made by Theodore Frisbie, Ga. Reg. Land Surveyor, a copy of which is recorded in Plat Book 7, page 206, in the public land records of Brantley County, Georgia), then run north 88 degrees 57 minutes 30 seconds west along the north land lot line of said Land Lot No. 176 a distance of 530.95 feet to a concrete monument located on the easterly edge of a lake of branch of Satilla River (but not the main stream thereof); then run north 88 degrees 48 minutes 10 seconds west along the north land lot line of said Land Lot No. 176 a distance of 689.52 feet to a concrete monument, then run south 29 degrees 55 minutes 20 seconds west a distance of 2,664.70 feet to a concrete monument, and which said concrete monument marks the POINT OR PLACE OF BEGINNING of said 5.00 acres, more or less, hereby conveyed, THENCE running from said point or place of beginning north 88 degrees 48 minutes 10 seconds east a distance of 880.94 feet to a corner located on the easterly edge of a lake or branch of the Satilla River; thence to a point in the aforesaid lake or branch of the Satilla River reached by running the following three (3) courses and distances, to wit: South 34 degrees 10 minutes 35 seconds west a distance of 81.03 feet, north 50 degrees 42 minutes 35 seconds a distance of 48.18 feet, south 48 degrees 13 minutes 10 seconds west a distance of 217.34 feet; thence running south 34 degrees 03 minutes 35 seconds west a distance of 108.84 feet thence running north 88 degrees 48 minutes 10 seconds west a distance of 733.13 feet to a point; thence running north 29 degrees 55 minutes 20 seconds

east a distance of 316.84 feet, more or less, to the concrete monument marking the place or point of beginning. Said lands are a portion of Tract No. 14, as shown on that certain plat dated January 18, 1978 made by Theodore Frisbie, Georgia Registered Land Surveyor, a copy of which plat is recorded in Plat Book 8, page 19, in the public land records of Brantley County, Georgia. Said plat being an addition or continuation of the plat aforementioned, dated March 30, 1977 and recorded in Plat Book 7, page 206, in said county land records said property being further identified by that certain plat of survey recorded in Plat Book 10, page 90, in said county land records; said plats being incorporated for description and all other legal purposes.

to the Movant, Robert T. Crowell.

PLAINTIFF IS ORDERED to pay off the indebtedness owed to First Railroad Community Federal Credit Union on said property or to make arrangements to assume the loan and cancel the debt owed by Debtors on terms acceptable to the Credit Union within thirty (30) days from the date of this Order.

Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia
This 1st day of October, 1990.